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FILED
OCT 20 1981
ALEXANDER L. STEVAS,
CLERK

JOINT APPENDIX

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1980

* * *

NO. 80-1538

* * *

JAMES PLYLER, Et Al.
V.
J. AND R. DOE, Et Al.

* * *

NO. 80-1934

* * *

STATE OF TEXAS, Et Al.
V.
CERTAIN NAMED AND UNNAMED
UNDOCUMENTED ALIEN CHILDREN, et.al.

VOLUME C

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DOCKET ENTRIES

DISTRISCT COURT:

11/21/79 Multidistrict Panel Opinion And Order, filed.

12/20/79 Preliminary Hearing.

1/11/80 Motion Of United States For Leave To Intervene As Plaintiff, filed.

1/21/80 Defendant's Motion To Join The United States as a Third-Party Defendant, filed.

2/1/80 Order, It Is Hereby Ordered That The United States May Intervene As Plaintiff In This Action, filed.

2/1/80 Plaintiff Complaint Is Intervention By The United States, filed.

2/11/80 Joint Pretrial Order, filed.

2/13/80 Order, Filed. The State's Motion To Bring In The United States As A Third-Party. Defendant Denied.

2/19/80 First Day Trial.

7/21/80 MEMORANDUM,filed. Parties notified. LBN/ks
1. Defendant State Motion To Dismiss-DENIED.
2. Plaintiffs Motion For Partial Summary Judgement-DENIED.
3. Plaintiffs Motion To Proceed As A Class Action-GRANTED with respect to issue litigated in this consolidated proceeding; transferor courts should con-

sider separately whether plaintiffs claims against various school districts for damates should be maintained as class claims.

CLASS DEFINITION: All children who are over five and not over 21 years of age at the beginning of the scholastic year and have been or will be denied admission to the public schools in the State of Texas on a tuition-free basis because of the alienage provisions of § 21.031, Texas Education Code.

7/21/80 ORDER, filed. Parties notified. ks
1. Plaintiff's request for a declaratory judgment-GRANTED. Commissioner of Education and agents ARE ENJOINED FROM:
A. denying benefits of Available School Fund to any children who are over 5 years and under the age of 21 years on the first day of September of any scholastic year on account of their status under United States immigration law.
B. refusing to permit children who are ober the age of 5 years and under the age of 21 years on the first day of September of the year in which admission is sought to attend the public free schools of the district in which they reside on account of their status under United States immigration law.
C. refusing to permit children who are over the age of 5 years and under the age of 21 years at the beginning of the scholastic year to the public free schools of the district in which they reside free of tuition on account of their status under the United States immigration law.

7/28/80 Defendants State of Texas Notice of Appeal to Order Entered July 21, 1980, filed.

5TH CIRCUIT

7/30/80 Date Docketed.

2/23/81 Filing Order Granting Appellees' Motions For Summary Affirmance.

3/2/81 Filing Appellants', State of Texas And Texas Education Agency, Notice of Appeal To The United States Supreme Court.

3/13/81 Filing Appellants' Amended Notice of Appeal To The United States Supreme Court.

3/20/81 Judgment As Mandate Issued To Clerk

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TESTIMONY OF DR. GILBERT CARDENAS

TESTIMONY

In Re Undocumented
Alien Children Litigation

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Q. (By Mr. Torres) Would you please state your name for the record?

A. Gilbert Cardenas.

Q. Dr. Cardenas, would you please state your present residence?

A. I am living at 2415 Dwightway, Apartment 3, Berkeley, California.

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Q. I am looking at the Avante Study right now, which was just introduced into evidence as one of government's exhibits. It's also marked as defendant's exhibit.

It's defendants' Exhibit 2-3.

In that study, it indicates that, and you have referred to Professor Gilbert Cardenas' study with Flores from San Antonio before.

A. Yes, ma'am.

Q. It indicates here that they surveyed 100 undocumented respondents in San Antonio and in the Texas labor market.

And it says they were between the ages of eighteen and thirty-four years of age, most were married mailes, 55.5 percent of them had no formal education, 19.2 percent had grade range from first to third grade.

It went on to say that in the San Antonio study, forty-one percent of the respondents working in construction, twenty-three, the wholesale and retail trades, and, further, that Professor Cardenas interviewed undocumented persons who were not apprehended, said the average wage was two-fifteen per hour for all industries.

The Avante Study goes further. It then reviews the Cornelius Reports, which you have testified to, the contents of that to some extent.

And they say a familiar demographic profile emerges from the Cornelius Study, the undocumented person would be between twenty-seven and twenty-nine and the majority had not attained beyond the third or fourth grade in the educational level, and the hourly wage from two-fifty to three dollars for those in agricultural occupations and four to five in factory jobs.

THE COURT: Just a moment.

MR. SCHEY: May I approach the witness and give him a copy of this?

What page?

MS. DASHER: Page nine.

Q. (By Ms. Dasher) Are these again reports that you have relied on in giving your opinion to the Court?

A. Yes, they are.

Q. And do you have any quarrel with those particular statistics?

A. Generally, no. In that it is pointed out, they are the only empirical evidence that we have had on this population group.

I am generally in agreement with the consistency of findings between these studies and that they also do not contradict the findings that we have generated through our own research.

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Q. Now, all of the reports that you have cited generally give us a picture of illegal immigrants as a person with very limited amount of prior schooling.

Do you agree with that?

A. Yes.

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Q. It also indicates that when you are dealing with the group of persons that come in from Mexico, you are dealing with much more, a much lower educational exposure than you are when you are dealing with immigrants from other countries.

Do you agree with that?

A. Yes, that's right.

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TESTIMONY OF DR. THOMAS P. CARTER

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criminality, ward to the court, any number of other conditions. Almost all – I don't know how far I want to go on this one – but let's say that almost all the negative conditions of the society are positively associated with low education.

Now, I don't want to say that's universally the case with every human being, but has a statistical relationship.

Q. In your opinion, is there any effective substitute for formal education in this society today?

A. No.

THE COURT: How do you know that?

THE WITNESS: That's a good question.

THE COURT: Have you read the book, "The Overeducated American"?

THE WITNESS: Yes.

THE COURT: What do you think about that?

THE WITNESS: I think there is a point, Judge Seals, where the overcredentializing of people, the overeducating of people beyond the requirements of the system, economic and social

separately, but it does not involve the concept of using the language or the culture as a bridge to English and the American culture.

Q. Dr. Carter –

A. I should mention a bilingual teacher or aide, whoever is in the classroom, at least one of them should be literate in the language of the children, the other language, and should, of course, speak that language.

Now, that's quite – that's the other extreme from English as a second language, extreme where the teacher nor the aide need to be proficient in that language.

That was important to add.

Q. Dr. Carter, the State of Texas is arguing in this case that undocumented alien children should not be enrolled in the Texas public schools because of the lack of resources to provide them effective bilingual education.

In your knowledge and experience as an educator, what could be done to cope with these children?

A. Well, starting with the extreme and, if you will, the thing that perhaps I personally would prefer, would be high quality bilingual education. High quality bilingual education involves more than content and technique. It involves high expectations and all those other things and high quality of things.

In reality, that's not the world that we live in, although many places could implement a bilingual program, a good one, but for whatever reasons, chooses not to.

Given this situation, there are one hundred and one things a school could do, some of them probably would involve practically no training of that staff, perhaps none because so many people have so much skill in it already.

I have seen programs where they take immigrant children and merely pair them off with an English speaking child. Of course, all this depends on age and so forth and so on. They make every effort within the school to make this child comfortable within the social setting in which they operate. They give ever evidence of understanding that children don't learn to read simultaneously with learning to speak and don't push the reading with children who don't speak the language. Many cases where an aide within a classroom, and, I don't know about Texas, but in California I am going to guess that ninety-five percent of the schools where these kind of kids would go would be Title I schools and would have aides and community people available; that through the aide or trained community people, they begin to establish particular pull-out programs for these kids.

I am particularly impressed by a district near the border in California, Chula Vista – it's an elementary district – where they train parents to become the aides, volunteer aides to work with English as a second language, skills and developing those kinds of skills.

Q. Actually train parents to work with the children?

A. Yes. It would be perfectly possible, and I have never seen this done, I am sure it has been done, to take high school students and with a modicum of training, put them into a voluntary situation in the elementary schools. I have seen this done, but not with English as a second language or with English skills.

I have seen it done with other kinds of aiding in the classrooms. In fact, I evaluated one of these programs years ago and the amazing thing was the quality of improvement of achievement of the children from the high schools, kids from the high schools that were working in the other schools. Any number of pull-out programs to a reading Spanish or to just a speech teacher who has been given certain skills would be certainly useful.

Sharing team teaching arrangements where you could have a one bilingual teacher, say Spanish-English speaking in the classroom with a person who is not, who's English dominant or monolingual in English. This kind of arrangement has been accomplished to development fullfledged bilingual programs in Nogales, Arizona where they teach team teaching and three aides teach them. They even have the capability, although I am sure it's not necessary, of bringing in additional people and so forth.

By using language experience approaches to the development of curriculum, which was definitely the case in the United Consolidated School District in Texas prior to the middle '60's, the beginning of the '70's, it's possible to construct your own materials using the life experiences of children so that the contents become appropriate.

One of the real misnomers or, not misnomers, pieces of misinformation people have is that to develope an appropriate program for the population is terribly expensive.

United Consolidated in developing the first complete bilingual program in Texas, outside of Laredo, I do not believe spent one extra cent.

Carlsbad School District in California, north of San Diego, which is about one-third Spanish-English bilingual, I mean the program, initiated the program with a transfer of $1,000 to the curriculum materials.

United Consolidated did not buy any curriculum materials. They made them.

The ex-associate superintendent of that district, who was with the Texas Education Agency, in discussing it with me, indicated that was one of the reasons for the

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So what we are getting when you look at the study, assuming, and I agree with Ms. Dasher that I am not a demographer, I do think that I know something about Mexican-American dropouts and to assume that the children that are Hispanic, the children that are left over that are not accounted for in the drop, in the official dropout rate or undocumented children overinflate the number of undocumented kids because two-thirds, I am guessing, I have no way of – I would suggest that only one-fifth to maybe two-fifths of the dropouts are ever considered officially recognized dropouts.

What we have done is inflate the number in the basic equation. I have no way of knowing how much.

But if the basic assumption is right, that I am making, and the basic assumption is wrong that the study made, then the figures are wrong.

Q. (By Ms. Swanson) Excuse me, Dr. Carter.

When you say the basic assumptions made in the study, are you referring now to the defendants' study, the Criterion Analysis Study?

the cost of overall education in the State of Texas as opposed to the exclusion of any other group?

A. No, no. In fact, one would have to be an expert to answer on dollar-centswise, and I would hesitate to do so. But the exclusion of the undocumented will affect the finance of schooling the same way the exclusion of blue-eyed blondes would affect the finance of Texas.

Q. So, in your opinion, there is nothing unique about undocumented students in terms of –

A. I can't think of anything unique about them. In fact, I bet you if we lined up a random assortment of the undocumented children and compared them with the documented Hispanic kids, that we would have to be experts to tell the difference.

Q. Doctor, in your opinion –

A. Maybe the children don't even know, for that matter. The child is the unconscious product of or conscious perhaps as he grows older, product of what his parents did. It is not the fault of the child that his parents are undocumented.

I can almost make biblical illusions on that one.

Q. You testified earlier about bilingual teachers'

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TESTIMONY OF DR. KENNETH L. MATHEWS

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help her.

I can understand you trying to help the court.

But we have got the witness here so why don't you move into what you want him to testify to?

MS. SWANSON: Thank you, Your Honor.

Q. (By Ms. Swanson) Dr. Matthews, how important do you feel the school is in influencing a child's emotional outlook and development?

A. I feel that the school and education are probably one of three major areas in a child's development.

Q. What would you say the other major areas are?

A. I also see the family and the physical environment in which a child is reared as being a significant variable along with education.

Q. How would you expect a child to be affected emotionally from being excluded from school?

A. I would expect the child to exhibit some psychiatric difficulties, of which there are several different kinds that the child might exhibit.

Q. Could you please give us examples of psychiatric difficultues which you might expect to occur?

A. They -- one of the types would be behavioral problems, that children who are deprived of education frequently suffer behavioral difficultues which can vary in extent from mild adjustment difficulties through serious behavior difficulties, like hyperactivity, withdrawing behavior into fairly severe types of difficulties such as depression and breaks with reality.

Q. How would you expect these children who are excluded to differ from children who are allowed to go to school intellectually or cognitively?

A. I feel that there is, that when a child is not allowed to be educated, that there is a decrease in the cognitive functioning of the child and in the ultimate ability of that child to develop adult type thinking patterns.

Q. Could you give the court an idea of how long this exclusion process would need to continue in order to have severe consequences?

A. I would think that exclusion for a year or two would produce some effect. The longer the exclusion goes, the more severe the effect would be.

Q. I see.

Would you expect any changes in these children's development of moral values or acceptance of society's norms as a result of their being excluded from school?

A. Yes, I would. The school setting alone with the family are major determinants for the socialization of the child and for the development of moral values.

And a child that is not educated would be limited because of lack of exposure to one of these major areas.

Q. What results could there be to his moral values?

A. Frequently the children will be unsocialized, will have decrease in social abilities, will not have stability in their personality, some of the moral determinants that we prefer for a citizen in our society to have.

Q. Dr. Matthews, you mentioned the child's relationship with other persons, specifically his family as another major influence on the child's development.

What effect would you expect the child's exclusion from school to have on his relationship with other family members?

A. With respect to syblings, I believe that there is an alientation and a distancing between the child and his syblings that would become increasingly greater and frequently this may be eventually acted upon as some hostility between syblings.

Q. Consider the situation of a family in which one child, perhaps a younger child, was born in the United States and is therefore a citizen and can attend school, and there is another child who perhaps was born while the family was still living in Mexico, therefore, that child cannot attend.

So we have a family in which one child can attend and the other child cannot.

What results could be expected to occur here?

A. I think the child who is excluded from education may perceive himself to be less good or to have a lower personal worth or a lower level esteem and that because of the exclusion, he sees himself in a less advantageous life.

The sybling who is educated may, on the one hand, perceive themselves as somewhat better than the child who is excluded in some circumstances; in other circumstances, I think that the child who is educated can become anxious about why he got certain benefits that the syblings don't get, sort of why he is so special more and above the other children.

Q. Suppose a child realizes that his exclusion from school is due to his parents' immigration status or his parents' status as being undocumented?

What effect could this be expected to have on his relationship with his parents?

A. Although initially some children may be somewhat happy at being excluded, I think that over the growing up years, there will become a pervasive antagonism that develops that the parents did not provide the education that the child then sees other people in his environment as obtaining, particularly when the child grows up and finds that he has difficulty in a number of difficult areas because of the lack of education.

Q. Suppose the child realizes that he might be able to attend school if his parents could pay tuition but his parents cannot afford the tuition.

How would you expect this to affect the family relationships?

A. Well, again, if the child is excluded from school he may feel a certain animosity towards his parents for not having provided the educational experience.

There is also the possibility that the child might feel guilty that he has placed his parents in such a position that the tuition funds are required, that the

parents seem unable to do things for the child that the child may perceive that the parents want to do.

Q. What effect would you expect a child's exclusion from school to have on his social relationships, his relationship with other children?

A. I would find that the exclusion from school would be inhibiting to the social interactions on one hand because the child who is excluded from school is seen as being different and this would prompt a sense of differentness between the kids who are going to school and the kids who are not and would produce some difficulty, sometimes harassment of a verbal or physical nature, sometimes kind of a cold shoulder approach that leaves the child feeling that he is different and an outcast.

Q. What would you expect the thought processes of other children to be towards children who are excluded from school?

A. I see two major issues about that. One is that the children who are going to school will think less of the children who are not, that they are somehow different from the children who are going to school and that prejudice will develop basic to that noticable difference.

A second thing that may occur is that the children who are going to school may see that some children are excluded from school for reasons that are not entirely clear to the children who are going to school, and that because of this, they may develop some animosity that the stable society which is presented to them will not perhaps be that stable and that someday in the future, they may be excluded on the basis of some grounds that they are not aware of.

Q. Dr. Matthews, have you had occasion in your own practice to treat undocumented children who have not attended school for periods of time?

A. Yes, I have.

Q. Have you found that any of these children have suffered psychiatric difficulties?

A. That's the basis for their having been to see me, was for psychiatric difficulties that they had.

Q. Could you summarize for the court the types of psychiatric problems that you have personally found in your own practice with undocumented children?

A. The problems that I often see relate to issues of self-esteem and to depression and to hyperactivity and to learning disabilities related to that.

THE COURT: What's the name of this phenomenon you're talking about?

THE WITNESS: Of problems developing.

THE COURT: Well, isn't there a term that they use in psychology?

For instance, like Jewish children that are raised in America and when Christmas comes along, all their friends are celebrating Christmas by many ways, toys and Santa Claus and all that, you know.

THE WITNESS: Yes. There is certainly a sense of alienation for some children that they have a different way of doing things.

THE COURT: What do you call whenever a minority in culture is denied to participate in the socialization of the culture?

Isn't there a terminology used in psychology for that?

THE WITNESS: I am not acquainted with that specific term.

THE COURT: I am not either. That's why I'm asking. There ought to be a term for that.

THE WITNESS: There have been positive changes when the issues of Jewish heritage plus Mexican-American heritage have been incorporated, like in the school system, with things that are typically Anglo-American. It provides a certain sense that all of the individuals are contributing to the culture represented by the school system.

THE COURT: There should be a term for that.

THE WITNESS: There may well be.

THE COURT: So we will know what we are talking about.

It's the same thing that any minority person in any culture, because of his culture, is denied the right to participate in what is universally accepted, the trauma of being excluded or excluding yourself because of certain beliefs you hold.

THE WITNESS: Yes.

THE COURT: There must be a term for that, that trauma, as you say, affects the child.

THE WITNESS: Yes. I don't know what the specific term is. I am sure there is one in sociology somewhere.

THE COURT: I have never seen one.

What was it Sam Goldman said, exclude me out, don't include me in, or exclude me in, or something?

THE WITNESS: Yes.

THE COURT: It's a similar situation, isn't it?

THE WITNESS: Yes. It really represents a lot of the minority difficulties when one is not allowed culturization privileges.

THE COURT: I see young people, graduates from a law school that can come to work in a big law firm and they have a feeling that they are not really accepted and included because they didn't go to, say, the University of Texas Law School, but they went to another law school and they developed a psychosis of being excluded, even though they might not be excluded, but they would have this psychosis about it.

THE WITNESS: Yes.

THE COURT: What's that called?

THE WITNESS: Sometimes it's generally called an adjustment reaction of psychotic proportions. The psychiatric –

THE COURT: Give me a shorter world. You need a six-letter word.

Go ahead.

MS. SWANSON: Thank you, Your Honor.

Q. (By Ms. Swanson) Dr. Matthews, you were mentioning a moment ago some of the different kinds of

problems that might result to kids who are kept out of school.

Could you list in psychiatric terminology the different kinds of things that might happen here to these kids?

A. The different diagnoses that might be given to these children?

Q. Yes.

A. Some of the milder ones would be adjustment reactions. And then there are some more severe ones that include things like hyperkinetic reaction of childhood and adolescence, withdrawing

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whole.

Q. How about personality disorders?

You mentioned that as something which might occur.

What would the symptoms of that be?

A. The personality disorders are a lifelong attitude that a child has about their coping mechanisms. They may develop a way of looking at life in a superficial sense or in a very obsessive sense that precludes looking at the overall picture, but only seeing details or may in fact be dependent or similar things like that.

Q. Would you expect children who have suffered a reaction of psychosis or severe personality disorder to be able to get along in our society as adults?

A. I think that they are severely hindered in their ability to do so.

Q. How does society attempt to deal with these people?

A. Well, as these people become older, they will have difficulties in their employment; they may have difficulty getting along with society's rules or regulations; they may have difficulty providing a stable living environment for themselves or their family; and because of this, they may end up overrepresented in the criminal justice system, overrepresented in the welfare system, or overrepresented in the unemployed.

Q. Would you say that these children are more or less likely to be, these people, I'm sorry, are more or less likely to be institutionalized at state expense than persons who have been allowed to attend school?

A. I believe they are more likely to be institutionalized than children who have been provided an adequate education.

Q. Would you say they are more or less likely to be imprisoned at state expense than children who have been allowed to attend school?

A. I believe they are more likely to be imprisoned.

Q. Dr. Matthews, in summary, what chance do children who are excluded from school for their entire life have to become emotionally healthy or economically self-sufficient adults?

A. I believe their ability to become healthy adults and self-sufficient adults is limited by the fact that they have not acquired an education.

Q. How limited?

will — that the children who are going to school will somehow in the future be excluded as well or treated in a less adequate way than they are currently being treated.

I think that another factor is that the children who are in school will polarize themselves with the children who are not in school to produce an attitude of less acceptance of children who are not in school.

Q. In your experience with various cognitive emotional behavior practices that you have been talking about, what differences have you encountered among Mexican-American citizen children, documented Mexican children and undocumented Mexican children?

A. I feel that the group, three groups are fairly equal.

While there are some individual variations in each of the groups, I feel that overall the three groups are generally consistent with each other.

Q. In other words, as to learning ability, you would not find any differences?

A. Right. I do not see any of the groups being especially advantaged or especially disadvantaged in a basic biological sense.

Q. Thank you, Doctor.

THE COURT: Give your name and who you represent.

MR. WILSON: Greg Wilson with the Attorney General's Office.

I am representing the defendants.

THE COURT: Now, then, speak slowly and keep your face in the microphone.

(Discussion off the record.)

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VOLUME X

TESTIMONY OF MR. LEONEL J. CASTILLO

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THE WITNESS: Yes, sir.

Q. Could you please state your name for the record and spell your name, please?

A. My name is Leonel J. Castillo. L-e-o-n-e-l J. C-a-s-t-i-l-l-o.

Q. Could you please explain your association with the Immigration and Naturalization Service and the time period of that association and what position you held?

A. Between the period of May 13, 1977 through October 1, 1979, I was the Commissioner of the United States Immigration and Naturalization Service.

Q. And could you just describe for the Court briefly what responsibilities the Commissioner of the Immigration and Naturalization Service holds?

A. The Commissioner is responsible for the administration of the Immigration and Nationality Act, responsible for the day-to-day operations of that agency and answers directly to the Attorney General of the United States.

Q. Could you state approximately what the budget is of the Immigration and Naturalization Service, where it gets that budget and how it is determined, where or how the budget will be spent?

In other words, if you could explain a little how priorities are set within that budget?

A. The Service has an annual budget, approximately three hundred million dollars.

The historical emphasis of the Immigration Service has been to place roughly 70 percent of that money in what are termed enforcement activities, that's essentially Border Patrol, investigations and some inspection activity.

The other percent of the budget, 30 percent or so goes to what are commonly called service or adjudicative functions and these have to do with office administration processing of immigrants and refugees and other nonenforcement activity.

The process by which the dubet is developed is that process used by the president in conjunction with the Congress.

The President, upon the advice of the Department and other members of the Executive Branch, especially the Office of Management and Budget, presents a budget to the Congress, the Congress debates it, usually passes a budget similar to that one he presented, and then the President in some rare instances may veto a category or a section of it.

But the process is the traditional budget process for federal agencies.

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Q. Approximately what total number of Border Patrol officers are located either at the borders or at the various ports of entry into the United States?

A. On an average shift, the Immigration Service has about 90 percent of all Border Patrol officers on the southern border, and what that means is that on an average shift, we have approximately 250 officers to cover the 2,000 miles of border from Brownsville, Texas to San Diego, California.

Q. In order to completely or almost completely seal the southern borders, what type of enforcement activity do you think that would take, and do you believe that policy makers at the present time believe that it would benefit the United States interests to totally seal off the southern border?

A. There have been no requests and no recommendations made by any part of the United States Government to Congress or the Executive Branch to seal the border.

There have been a number of requests made to more effectively enforce existing laws.

But the idea of sealing the border is more something that's discussed in theory than in fact because the world's busiest border is the border between the United States and Mexico with more daily crossings recorded through ports of entry than between any two countries anywhere in the world.

Q. During your tenure as the Commissioner of the Immigration and Naturalization Service, did you become aware of or did you become privy to positions or documents which indicated a policy of maintaining a

flexible southern border in order to provide an escape valve for the unemployment in Mexico or, alternatively, to allow the flow of cheap labor into the United States?

A. I know of no official documents that state that.

There is obviously the defacto case where with 250 officers you cannot seriously discuss full enforcement of the immigration laws.

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Q. And in terms of the urban industrial sectors which employed undocumented workers, what do you believe, based on your experience, to be the primary motivation for the utilization of that labor force?

A. I think that they work hard, they usually work for less, and, or can work for less, they are more exploitable or manipulable as employees and for many industries, many employers, it's an ideal labor force.

Q. Going back for a moment to federal law: Is it true that on numerous occasions various types of amnesties have been introduced in Congress which would allow certain portions of the undocumented population in the United States to remain here as permanent residence?

A. There have been many bills introduced that would have granted adjustment of status, and amnesty in your terms, to persons who are already here and were out of state.

None of these have passed.

Q. At the same time, have there been bills introduced which would implement an employer sanction law on a national level?

A. These also have been introduced and, similarly, they have not passed.

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Q. Of those persons who enter unlawfully, approximately what percentage do you believe are coming to cities or locations where they have family members already residing?

A. You have to be – let me preface my remarks, my answer, by saying that all of the figures on undocuments are very imprecise and all we can give you are estimates and sometimes they are guesstimates and sometimes they are not even that good.

But, a study conducted by the Immigration Service last year indicated that, together with some studies in Mexico that concluded the same way, that Mexican Nationals who were coming to the United States tended to come from particular villages, particular monosperios and then flow in very direct lines into particular locations in the United States, and members of the Border Patrol will often tell you that people from the particular village will tend to end up in a particular location in Houston.

So you will find a lot of family members at one time or another in one or the other locations.

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Q. (By Mr. Schey) Could you explain where the primary enforcement activities take place other than along the border within the United States and perhaps more precisely, if you could explain whether enforcement activities take place in residential communities, in schools, in factories, if you could be that precise and explain to the Court the current thinking of the Immi-

gration and Naturalization Service in this regard?

A. I will try to be brief.

Essentially, the Service feels that it's more cost effective and much less troublesome than many other ways to try to apprehend people as they are coming into the country.

So the bulk of the resources are located at the border.

slhIn the interior of the United States, primarily in the major urban areas and in a few selected farm areas in California and a few other places, the Service has forces of investigators and in a few cases Border Patrol officers who also try to make apprehensions of persons already here.

The policy has been developed that we will primarily or the Service will primarily concentrate its resources in apprehending and then deporting where possible those persons who are felt to be taking jobs that could be held by United States citizens.

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Q. What would it take in order to effectively enforce the Immigration Act as it exists on the books today, and I am not talking about one hundred percent enforcement. That's probably an ideal.

A. I think that you could double the size of the enforcement activity function and of the service function and you could make a substantial dent in the problem with that increase.

But doing so without changing the law would probably create new problems and maybe as serious as the ones we would have now.

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on what we want.

Q. Are you aware, approximately, of what the present backlog is because of the quota system for immigration, for potential immigrants from Mexico, people who have already filed some kind of paperwork?

Just very roughly, what is the backlog in terms of numbers and years?

A. There are over a quarter of a million Mexicans who are currently awaiting entry to the United States as immigrants.

And when you realize that there are twenty thousand numbers per country per year in the best of cases for legal immigrants, we are often speaking of a seven year wait.

Q. Do you find — did you find as the Commissioner of the Immigration Service that many persons who were seeking documentation, who are on the waiting list, would tend to come to the United States to wait, even though they would come here unlawfully, rather than to wait in the sending country or in Mexico?

A. We had a number of cases that individuals, especially in what's called second preference, a Mexican National marries a Mexican residing in the

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Q. Do you find or do you believe that there is a type of conflict between the service side and the enforcement side of the Immigration and Naturalization Service to the extent that the more money that you put into law enforcement, the less money you have available to assist people in the documentation process?

A. Well, I indicated earlier that Border Patrol on an average shift has 250 officers over 2,000 miles.

The service side of the Immigration Service is equally strapped and on many days, such as yesterday here in Houston, the office on the fifth floor of this building was so jam packed with legal applicants, that they had to close it at 10:30 because there was no place to put anyone else.

Q. 10:30 in the morning?

A. 10:30 A.M. Because there was no more room in the building, in the facility.

That is not a typical in the United States.

We are witnessing perhaps the second largest influx of immigrants, legal immigrants in the history of the country and, depending on what is done about the undocumented, we could very well be witnessing the largest influx of immigrants in the history of the United States.

Q. You indicated a little earlier on that you felt that in essence the United States had already granted an amnesty to undocumented persons in the United States.

Could you expand on that thought a little, please?

A. What I said was that there is a de facto amnesty, certainly not an official policy.

But when you contend with immigration and documentation in the State of New Mexico with three investigators for the entire state, you have to come to the conclusion that you are not going to deport everybody in New Mexico who could be deported. That's what I mean by the de facto situation.

Further, when the number of investigators is reduced by one tenth in this year's budget, you have to come to the conclusion that it seems to be a de facto situation, that the efforts to root them out are going to be much more difficult.

Q. Do you believe that the notion of a de facto amnety is essentially a nationwide phenomena or do you believe it's just limited to certain states or portions?

A. The pressure is nationwide, but they are especially felt in the Sun Belt, and I am including there the entire West Coast of the United States and some of the urban areas, so it's rather stretched through the Sun Belt.

That's where the majority of the new immigrants are settling is in the Sun Belt.

Q. Would you include the State of Texas in your notion of a de facto amnesty?

A. Oh, certainly.

Q. What do you believe to be the policy reasons behind this type of de facto amnesty?

A. The primary reason it's used in the Congress and in the Executive Branch is money, that there is no more money to hire more Federal employees because the Federal bureaucracy is too big and that there is not going to be more money for a while and that seems to be the primary reason. At least, that's what I kept hearing at all the budget hearings and in the Congress.

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have spent here.

So, clearly, a family unit is much, usually is much more imbedded in a community than a single male who lives in a house with 20 young men.

Q. And would that fact contribute to the results whereby it would be less likely that that family would be successfully deported from the United States?

A. It would be much more difficult, much more difficult to deport a family unit than it is to deport single males.

Q. I may ask a couple of questions on the notion of deportation for a moment.

What is the purpose of the deportation hearing in the context of immigration law?

A. The hearing is held to make the determination as to the deportability.

If you could compare it to a local police situation, the officer arrests someone and charges him, then a local judicial process makes the actual determination of guilt or innocence.

Similarly, an immigration judge makes a determination of deportability or not.

Q. Is that sometimes a complex factual question?

A. Oh, yes. There are cases that are very complex.

Q. Are there cases in which it becomes a complex legal determination?

A. Oh, yes. We have many lawyers who make a living representing clients and who work in this area profession.

Q. Do you also have lawyers who make a living representing the Service?

A. We have lawyers on both sides.

Q. Do you believe that a high school principal with no formal training in immigration law could accurately and consistently determine whether or not a child is deportable from the United States?

A. Without training, I can't imagine that they would have many people who could make such a determination.

Q. Am I also correct in understanding that even if an Immigration officer believes a person to be deportable from the United States, that Immigration officer can make no decisions which would negatively impact on that persons life other than to initiate a deportation hearing?

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power along those lines?

A. The officer can recommend bond be posted or can prosecute more vigorously and put limitations on a person's movement, but an officer may not, shall not, cannot make a decision of deportability.

Q. While you were the Commissioner of the Immigration and Naturalization Service, what did you learn about the way in which undocumented families in the United States are treated by employers, by landlords, by merchants, et cetera?

A. Well, the undocumented in general is more exploitable and more vulnerable than any other group in the United States.

The undocumented family similarly is more exploitable.

But I believe that the undocumented family unit, it's hard to get factual evidence, is less exploited, less vulnerable than the single adult men.

Q. Could you give us some examples of the type of exploitation which you either heard about or learned about while the Commissioner of the Immigration Service?

A. They range from direct economic exploitation, that is certain employers who say that you may work here,

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decisions, Congressional actions?

A. The process changes and the format and the forms change continuously.

Q. How difficult would it be for the Immigration Service to take the educational system of a particular state, such as the State of Texas, and to take on the burden of not only keeping all of your own employees informed of changes in the law, changes in the forms, changes in the operations and instructions, changes in the regulations, et cetera, but to also keep an entire educational system aware of those changes?

Is that something you feel the Immigration Service could take on with its present budget?

A. No. The Service can barely maintain its own activities. It would just not be very practical to look to doing the same with other large institutions.

Q. To your knowledge, is there any other state in the Union which currently finds it desirable to exclude certain undocumented children from the public schools other than the State of Texas?

A. I don't know of another state. I understand there are some, but I don't know.

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Is that correct?

A. That's correct.

Q. What is your experience in how difficult or how easy or how rapidly indigent people unfamiliar with the workings of the State have in obtaining those documents?

What is your general experience?

A. Well, it's very difficult in many cases. It's complicated even further if you are coming from a sending country which may not have very many Xerox machines or which may not have ways of reproducing documents or which does not really keep very good records or which has had a revolution and all the documents have been burned or lost or where, for some reason, no one recorded some of the sigificant events.

So there is continuous, constant documentation problems with many, many countries, including parts of the United States.

Q. So, in my example, if the father was having problems getting some of these state documents, which he needs to even go down to the Immigration Service and file his papers, it may take him, as I understand your testimony, a fairly sigificant amount of time to

even gather the preparatory documents to take even the first step in filing with the Immigration Service.

Is that correct?

A. Collecting of the supporting documents can be very difficult.

Q. And, finally, when that person finally takes his little girl down to the Immigration Service and says, here I am, I am a United States citizen, I want to file an application to immigrate my little girl, what is the likelihood that the Immigration Service would deport that girl from the United States?

A. It's very unlikely.

Q. You think it's less than--?

A. Remote.

Q. Remote?

A. Yes.

Q. Fine.

Thank you, sir.

MR. SCHEY: No further questions, your honor.

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Q. This may be slightly out of order, Mr. Castillo, but I wanted to do something with a couple of defendant's exhibits.

We testified about the position of the economic persons, employers with respect to the laws about criminalized employer hiring.

You indicated that some employers were opposed to that, did you not?

A. Yes, I did.

Q. You are also aware that there are other groups which are opposed to that provision being put into law?

A. Oh, yes.

Q. And one of those groups would be the Mexican American Legal Defense Fund, would they not?

A. That's true.

Q. And have you seen what has been marked as Defendants' Exhibit 14-26, The Mexican American Legal Defense and Education Fund Statement or Position Regarding The Administration of Undocumented Aliens Legislative Proposal?

A. Yes, I have.

MS. DASHER: May I approach the witness, your honor?

THE COURT: Yes.

Q. Now, if you would turn to page 68 of that document and would you read the paragraph that's marked there?

A. It says: "Policy considerations: considering first the policy implications of the proposals -- believe that's adoption would unavoidably lead to widespread employment discrimination against ethnic Americans in general and Mexican Americans in particular. Faced with the statute making it illegal to hire undocumented workers, some employers would be over

zealous in their actions and would refuse to hire anyone whom they suspected of unlawful entry – however unfounded the suspicion and regardless of the proof of legal residence provided, other employers would react in a like manner and out of a desire to avoid all risk of a Justice Department lawsuit with its attendant complications, financial costs and adverse publicity."

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Q. You talked about de facto amnesty.

It's true, is it not, that the United States Government holds the strings in terms of making someone's status in this country legal or not?

A. That's true.

Q. They can grant the right to vote.

True?

A. Congress.

Q. Congress can?

A. Yes.

Q. Congress could provide benefits of the Social Security Act, could they not?

A. Certainly.

Q. They could provide the benefits of all the welfare system and Medicaid, AFDC, could they not?

A. They could.

Q. In fact, they could create a powerful class out of what is now a powerless class, could they not?

A. They could.

Q. They have not, have they?

A. By inaction, I think they have allowed it to develop.

Q. In effect, the United States and the United States Congress has by its failure to act created a very powerless subclass in our society, have they not?

A. I think that's true.

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REDIRECT EXAMINATION

BY MR. SCHEY:

Q. Do you believe that excluding children from school will serve to institutionalize and simply perpetuate the exploitation of undocument persons already suffering in the United States?

A. I think that the exclusion will continue, will continue their status as a vulnerable group, as a powerless group, will serve to continue it.

Q. As those children grow up, if they remain in the United States, do you think it will increase their general vulnerability?

A. I think there is no question but the people that are illiterate will be much more vulnerable.

Q. Do you think it will incidents of exploitation?

A. Probably increase the likelihood.

Q. To your knowledge, it there any – strike that –

While the Federal Government has apparently decided that undocumented persons should not participate in certain Federal welfare programs, to your knowledge, is there any Federal law in the area of education which seeks to exclude undocumented children?

MS. DASHER: Objection; no foundation, no showing that he has reviewed all

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TESTIMONY OF UNNAMED WITNESS #2

[page 7-35]

UNNAMED WITNESS NO. 2

CALLED TO TESTIFY BY THE PLAINTIFFS, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

[page 7-41]

Q. Sir, where did you and your family reside before entering the United States?

A. Rio Bravo, Tamaulipis in Mexico.

Q. Is that a small village or town in Mexico?

A. Yes. It's a small town.

Q. Were you born there?

A. No. My wife was born there.

Q. Where were you born, sir?

A. In Jalisco.

Q. Did you attend school in Mexico, sir?

A. Yes.

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Q. How many years did you go to school in Mexico, sir?

A. Just until the second grade.

Q. Since you have been in the United States have you been returned to Mexico by the Immigration authorities?

A. In 1975 once.

Q. Was it just you or did your whole family return?

A. Everyone. The family.

Q. How long did you remain in Mexico?

A. One month.

Q. How did you return to the United States?

A. A friend of mine took my car down to Mexico and I came back with my whole family.

Q. When you came back did you intend to remain in the United States?

A. Yes. That's why I came back.

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TESTIMONY OF SISTER EMILIANE CARDENAS

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Q. (By Mr. Schey) Could you state your full name for the record, please?

A. Emiliana Cardenas.

Q. Sister, could you please tell us if at the present time you work with the children of undocumented people here in Houston?

A. Yes, I do.

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Q. How many people do you find, how many families do you find who have children enrolled in the schools, how many leave the United States and return to live in Mexico?

Have you had that happen to many people?

How many families has that happened to?

A. I have not heard of the families returning to Mexico, but I know of some children who return to Mexico when they cannot get the education or the instruction they need, the parents send them back to Mexico. I lost about three the first semester.

Q. That is because their parents sent them back to Mexico?

A. To be educated, but the parents remained in the United States.

Q. Have you seen any cases of children leaving the State of Texas to go with the family to some other state where they could obtain an education?

A. Not out of the state. They have tried to go out of the cities, to other cities like San Antonio or the Valley, somewhere in the Valley.

Q. Is it your understanding that some, that in some cities they will allow these children to enroll in the schools and in others they will not?

A. Some families told me that in the past in the Valley, for example, Weslaco or McAllen, Harlingen, maybe, they were taking children, undocumented children.

Q. So you find sometimes a family would move from one part of Texas to another part of Texas?

A. Yes.

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TESTIMONY OF DR. GLORIA ZAMORA

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arts have traditionally played a very important role in any bilingual program.

Then, in this kind of arrangement, then, you have teachers who are teaming and who are able to share the responsibilities and who are able to give the students everything that they need in the way of language services.

Now, recall also that resource people may be a part of the team. Parents who volunteer from the community are marvelous additions to this kind of team; teacher's aides that are paid from various souces are a marvelous addition; student teachers from the university make marvelous additions to this team.

I have participated in this kind of teaming arrangement in the past and have helped school districts develop that kind of teaming arrangement.

Do you have any questions on this before I discuss one more?

Q. I will get into some other questions as soon as you finish there.?

A. The important thing to remember about that model and the other model that, one of the important things to remember about that is that we are never changing the ratio of students to teacher. It remains within the boundaries determined by the State of Texas right now, at one teacher for each twenty-ive students in average daily attendance.

THE THIRD MODEL: This model is actually a variation of the one that I have just described and the variation there is that we have, the reality of the situation is that we don't have open space and may not even want open space for all teaching, all of the instruction that goes on.

So, this is a team teaching model in what I call a self-contained or closed space, architecturally closed space. Okay.

Again, this can be a two teachers and two classrooms team or three teachers and three classrooms teaming.

I will do the two by two model.

In this one, we have this classroom and right next-door to it, we have the other classroom.

This is a mixture of children here, bilingual children, students of

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THE WITNESS: Thank you.

A. If we were to use only a self-contained model, the very first--

Q. (By Mr. Guajardo) That was sheet number one.?

A. Sheet number one.

I would prefer if you would be kind enough to repeat your question.

Q. My question was would the quality in bilingual education be defused or would it be adversely affected by the increase in the number of limited English proficiency students?

A. My opinion is that if we significantly increase these numbers and it is in a self-contained model where one teacher has full responsibility for doing all the teaching, we might adversely affect any kind of teaching program if the numbers were significantly increased.

But if we use the team teaching model that I diagramed on sheet two and three, then I think that you can see that we would be using the staff in different ways, not increasing the student ratio, therefore providing for the addition of additional numbers of limited English proficiency students without changing the student-teacher ratio which, therefore, in my

TESTIMONY OF MARY McKINNEY GALVAN

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effectively.

One of the basic strategies that any ESL teacher learns is how to work in small group instruction.

What that means is that then rather than organizing an ESL class that has only one student or four students, it's possible to have a class of twenty students divided into five groups of four students each. Small group instruction is vital to the effective teaching of ESL.

Q. If an ESL program or bilingual education program in Spanish was initiated in a school, would that inhibit or prevent the school in any way from offering other foreign language, such as French or German for those U.S. citizen students wanting to learn such a foreign language?

A. No, I see no reason why it would.

Q. Would programs for limited proficiency students utilizing English as a second language methodology, would they be adversely affected by an increase of limited English proficiency students?

A. Shouldn't be at all. And I would fight very hard to keep the quality of services to limited English speakers in all areas of the curriculum as high as

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attention that everybody, every teacher in the school be aware of what the needs of the limited English speakers are and be trained in how to meet those needs.

When we are talking about impacting the school with, I believe you gave 25,000 hypothetically, 25,000 students, then one of the things we need to face is we don't know what percentage, but it would be a fair guess of mine that less than half of those children are going to be anywhere near what we would call non-monolingual Spanish speakers.

MS. DASHER: Objection, move to strike, your honor. She is way beyond her own expertise again.

MR. GUAJARDO: I believe that this is stated in a hypothetical and strictly within the hypothetical.

THE COURT: I am going to let it in, Ms. Dasher, and give it whatever weight it deserves.

MS. DASHER: All right, Your Honor.

THE WITNESS: Yes.?

A. It's inconceivable to me that all of those 25,000 children are going to be absolutely monolingual Spanish speakers. Many of them are going to be already speakers of English to a certain extent.

To be sure, they are not going to be able to follow the lecture of a teacher in English with the native control of an English speaker, but with some help, they can go on with their cognitive development while they are learning English. They are not going to be zero English, which means we are not talking about massive help for every one of those children.

I think we ought to be talking about motivating appropriate resources based on the fact that the children who are zero English are going to have much greater needs than children who have some English.

But children who are even halfway up the scale between zero English and native speakers of English are going to need some assistance in the classroom, they are going to need some help.

But it need not be costly, and it need not be massive help.

Q. Just one more question.

TESTIMONY OF DR. ALBAR PENA

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Q. And in your experience as a teacher in bilingual education, did you have any experience in dealing with undocumented children?

A. Yes, yes, I do.

Q. Please state whether these children who are undocumented, whether those children had any needs that were distinguishable from other children in terms of bilingual education.

A. No, they didn't. They are essentially the same.

Q. Would bilingual education programs be adversely affected by an increase of limited English proficiency students?

A. Not in my opinion.

Q. What ways could we deal with increase, sir?

A. There is different ways of doing with different staffing patterns we have to employ where we would use team teaching approach, where we have a monolingual teacher and bilingual teacher or monolingual

teacher with bilingual teacher aide, we have all the children from all the grades coming in and doing tutoring, and we have parent volunteers as well.

Q. Do you have experience with the State mandate for bilingual education?

A. Yes, I do.

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Q. In your experience in dealing with undocumented children, would a significant proportion of those who are undocumented necessarily need bilingual education?

A. It would depend again on their experience and background, what kind of formal education they have had prior to entering public schools here.

In essence, not all of them would need bilingual education.

Q. Would the increase of additional limited English proficiency students statewide result in an increase in classroom size which would have detrimental effects on the quality of bilingual education?

A. Not if we apply the differentiated staffing pattern that I have stated before.

Q. Have you had experience at an institution of higher learning in the recruitment of students into bilingual educational programs?

A. Yes, I have.

Q. — Teacher programs?

A. Yes, indeed.

Q. What efforts, what can be done to increase the pool of bilingual education teachers in Texas?

A. Certainly a greater incentive in retaining the

TESTIMONY OF EDWARD E. RANDALL

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EDWARD E. RANDALL,
called as an adverse witness by the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCHEY:

Q. Would you please state your current position with the Texas Education Agency?

A. I am the Director of Audit.

THE COURT: Are you calling this witness as an adverse witness?

MR. SCHEY: Yes.

Q. (By Mr. Schey) For how long have you been the Director of Auditing?

A. Since January 1, 1967.

Q. Am I corrrect in understanding that the Auditing Department of the Texas Education Agency determines the number of ineligible students that a school may have enrolled during the school year?

A. No. The Audit Division would merely take a look at attendance as reported by–

Q. My question, sir, was does the Auditing Division determine the number of ineligible students enrolled in the Independent School Districts?

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It lists a number of different reasons why a person may be found to be ineligible to go to the public free schools?

A. That's correct.

Q. And is one of those reasons and the final reason listed at the bottom of the page "an illegal alien"?

A. That's correct.

Q. Could you tell us if the Texas Education Agency, through either the Auditing Division or through any other division, has assessed the physical impact of undocumented children on the public schools subsequent to enactment of Section 2103-1?

A. I can only really answer for the Auditing Division, no.

Q. The Auditing Division has not done that.

Is that correct?

A. That's correct.

Q. Has – subsequent to the implementation of Section 2103-1, has the Auditing Division been able to determine how many students were moved out of the public schools as a result of the implementation of Section 2103-1?

A. No.

Q. Based on all of your experience as Chief of the Auditing for Texas Educational Agency, do you have any idea whatsoever as to how many undocumented children were removed from the public schools or kept out of the public schools as a result of the implementation of Section 2103-1?

A. No.

Q. Other than the two documents which you presented to me at your deposition, have any other documents on the alienage provisions of Section 2103-1 been presented to the auditors who work for you on this question, on the particular question of aliens?

A. Maybe on a piecemeal basis in that it would be individual letters to schools, but I couldn't tell you exactly which ones without going back.

Q. To your knowledge, there is no other policy positions issued statewide on the qeustion?

A. No others generally.

Q. It would just be the two which have been introduced into evidence?

A. Yes.

Q. Other than the two documents which have been introduced into evidence, are you aware of any other documents which the Texas Education Agency has sent out statewide to all of the schools

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Is that correct?

A. Yes.

Q. In the sense the institution or implementation of Section 2103-1, which is give years ago, how many schools have been audited in the past five years by your employees, just approximately?

A. Approximately?

Q. How many a year are audited?

A. Eight hundred, approximately.

Q. Is that the total over the five year period?

A. I would say the total, yes.

Q. Eight hundred schools.

During those audits, how many reported incidents have you personally heard of in which an undocumented alien was discovered to be going to school?

A. None.

Q. You haven't heard of any?

A. None.

Q. How about the other grounds for ineligibility?

Have you heard about students being – is there any other grounds of ineligibility in which you could say you haven't heard of any instances of a student being found ineligibility?

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its own policy?

A. Each district could have its own policy of the type of documentation required, yes.

Q. You are saying the Texas Education Agency has not required a consistent policy throughout the state?

A. This has always been left up to the local school.

Q. Now, I thought a moment ago you said TEA had just issued a whole set of regulations.

A. Those are not regulations that are presented on the two letters.

These are information letters on the type of documentation that could be available.

Q. Didn't you just testify that something was recently published in the Texas Register?

A. All I have seen is a list and I am not really knowledgeable as to the contents of that. I have just seen it. I am aware it does exist in the Register.

Q. Is that list mandatory or discriminatory?

A. I can't really answer. I would have to look at it.

Q. What do you instruct your auditors?

Do you tell them you have to follow this list or do you tell them you can either follow it or not follow it?

A. If it is a State Board policy, an established State Board policy, we would pick it up and assimilate it to the auditors.

Q. Is it mandatory or discriminatory?

A. This would be the type of listing, as I understand it, where they would look to see if specific types of documents may be on file in a district.

Q. Is it your understanding that the Independent School Districts have to follow those regulations or is it your understanding that they are free–

A. I still do not have that particular knowledge of this regulation. I just do know that it has been presented in the Register and whether it's law or not, a regulation or not, I can't answer that. I don't know.

Q. In terms of what you can say, as I understand it, is that up to now you are not really sure what's happening in the future, but up to now it has been a decision of individual school districts precisely the degree to which they either conform or not conform to the two letters we just introduced.

A. On the type of documentation required, it's been up to them.

Q. Now, what, in light of that, you would go to the school district if you wanted to conduct an audit of this question and you would find out what their policy is.

What is the next step that you would take?

A. We would look at whatever documentation would be available to see if they were following the policy.

Q. Precisely what would be the first step that the auditor would follow in order to determine if the school had allowed children in in violation of Section 2103-1?

A. To look at the individual records of students.

Q. What would they look for in the individual? Would

they just look at all the records in the school? Or how would they do that?

A. Well, I couldn't really answer this. This would depend.

Q. Do you recall in your deposition stating they would most likely look at the Spanish surnames?

A. Well, I don't know if it would be most likely or not.

Q. Do you recall saying that in your deposition?

A. I said it could be, that could be one thing.

Q. How do you think they would do it, tell us, if

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certificates.

Q. How would abolishing the need for census have anything to do with maintaining birth certificates?

A. The census was required for schools' last particular population.

Q. We are discussing birth certificates right now because the Commissioner of the Texas Education Agency told me that the first thing we do is go look at birth certificates.

Are these wrong?

I want to know if he is wrong, if this happens some of the time?

I just want to know if it happens some of the time?

How often in the past five years has your auditors looked at birth certificates of children in the school?

A. I can't answer that. I don't know.

Q. MR. BOWEN then went on and said: If the birth certificate shows a birth outside of the United States, then we make a random – selected other inquiries to determine if they are legally in the district and in compliance with the law.

Have you ever done that process or have any of your employees ever done that process?

A. Not to my knowledge.

Q. Not to your knowledge?

A. Yes.

Q. At the time that Mr. Bowen, that this deposition was taken, which was January, 1979, was he your immediate supervisor?

A. Yes, I believe so.

Q. He was? Is that correct?

A. I was trying to think when he became Commissioner. That would be basically correct, yes.

Q. I refer to page fourteen of his deposition when I asked him for more details and he refers me to – the Audit Division and the Director, Ed Randall, who is you, indicating that you were directly responsible to him.

Is that a correct statement?

A. That would be correct, yes.

Q. He is now County Commissioner, is that correct?

A. Yes.

THE COURT: Just a moment, please.

(Conference in another matter.)

Q. (By Mr. Schey) Looking again at page thirteen of the Bowen deposition, I asked him: Is there any standard criteria with regards to what initial survey of the birth certificate would uncover which would trigger a second step in the auditing, namely, some type of random inquiry?

And he said, well, I think as I stated originally, dependent upon the size of the district and we would determine, number one, the area being audited, how many birth certificates were available for students who were born outside of the United States.

Do you agree with that? Do you think that's what happened?

A. If that were the charge for audit, I would say that would be correct, yes.

Q. Have you ever seen that approach being taken the past five years?

A. No.

Q. Looking at page fourteen of that same deposition, he then said: The next step of the audit would be that they – meaning your employees – the auditors would ask to see the documentation on the student that they were looking at.

Is that correct?

A. That would be basically correct, yes.

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A. We would question the attendance of that child.

Q. Could you just explain what you mean by question –

Let's say there is no doubt about it. A child walks in and says, that's right, I am currently the subject of deportation proceedings.

Would that child be – under the instructions that your auditors have, would that child be eligible or ineligible for state funds?

A. We would question him as being ineligible and we would determine his attendance for that year so as to subtract it out.

Q. He would be ineligible?

A. He would be ineligible.

Q. Okay. What if the child said, well, I have already lost my deportation hearing, but it's on appeal.

Would that child also be ineligible?

A. We would – everything I am saying here is speculation – I don't know. I would have to see the exact situation.

Q. Do you think your auditors know?

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Q. Now, are you aware that prior to 1975 certain Independent School Districts in fact excluded children who were undocumented from the public schools?

A. I understand that to be true.

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A. That's what I understand, yes.

Q. That Mr. Bowen seems to confirm that on page thirty-eight of his deposition.

I asked Mr. Bowen this question, page forty.

I would like to see if his response is correct.

I said, to your knowledge, has your department gathered or made any attempts to gather from the school districts in this state a compilation of their policies in implementing Section 2103-1?

Now, to the best of your knowledge, does that remain true today?

A. To the best of my knowledge, that's correct.

Q. Don't you think that it would help your auditors if you did compile all of the policies that the Independent School Districts followed?

A. Not particularly, we have to look at them mostly. They are subject to change.

Q. I would like to ask you on page forty-ive, I would like to see if you agree with Mr. Bowen on this.

The question was: Clearly the documentation in and of itself is not what you are concerned with.

Is it fair to say that what you are really concerned with is the immigration status of the person in possession?

His response was: Does the documentation indicate that he is legally in the country. That's what I mean.

Is his interpretation accurate?

A. I would say yes.

Q. And do you believe your auditors are aware of that interpretation?

A. Yes.

Q. A person has to be legally in the country.

Is that a yes?

A. Yes.

Q. A person has to be legally in the country.

Is that a yes?

A. Yes.

Q. And his next statement, which is on page forty-five, forty-six, he said: If the person upon the time the action is initiated to examine documents – I assume he is talking about audit – is legally in this country, he is admissible and the foundation program aid will follow.

Is that a correct statement?

A. Yes, I would say so.

Q. Mr. Bowen also responded as follows to this question.

I would like you to tell me if this is your understanding of the current policy. The question was: If a

student approaches a school and was not in possession of INS documentation and indicated that he or she was in the process of contesting his or her deportability, current statewide policy would allow the school to deny admittance to that child on a tuition free basis.

Is that correct?

And he responded, yes.

Do you believe his statement to be accurate?

A. I would say, I would hesitate to say inaccurate.

Q. My question –

A. As –

Q. My question was is his response accurate?

A. Repeat that again.

Q. I asked him: If a student approached a school, was not in possession of INS documentation and indicated that he or she was in the process of contesting his or her deportability, current

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TESTIMONEY OF DAVID BUENTELLO

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Q. (By Mr. Mealer) Would you state your full name for the court?

A. David Buentello.

Q. Mr. Buentello, with whom are you employed?

A. The U.S. Department of Commerce, U.S. Bureau of Census.

Q. What position do you hold there?

A. I am the Coordinator for the Community Services Program for the Dallas Region.

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Q. How is the Census going to count those persons that by their very nature are going to be very difficult to count?

Let me ask you a specific question regarding migrant farm workers, migrant workers in the field.

A. This is a segment of our population that has been very, very difficult to enumerate.

The reasons being that these people tend to leave their state or the Rio Grande Valley where I believe we have our largest concentration of migrant farm workers, they tend to leave our state before April 1, 1980.

Now, we in the Bureau have procedures to enumerate them once they are out of the state, provided they live in labor camps. However, we know that only a very small percentage of these people live in labor camps. Most of them end up living in regular residential houses.

So, our concern is that if these people, and if they live in residential housing, they will get a questionnaire at their home. If they fail to read the instructions and those instructions are down here on the

bottom. It says that if everyone here who is staying only temporarily and has a usual home elsewhere, please mark this box.

And then it says, answer the questions on pages two through five only and enter the address of your usual home on page twenty.

By this, we – they have to fill our their permanent address in the last page of the questionnaire. If they fail to do this, that means that those people will be counted as residents of the State of Wisconsin, Indiana, wherever the case might be.

When that happens, that means that Texas, the State of Texas ends up losing millions of dollars because these people have their permanent residency in Texas, yet when the funds are allocated, those moneys will go to those states in which they were counted as of April 1, 1980.

What we are trying to do, and we are in the middle of a campaign right now in South Texas, is informing the social service agencies, the media, church groups, civil rights organizations to please help us in the awareness process so that our migrants, should they leave before April 1st, they will know how to fill out their census questionnaires, and it should be noted that these people from South Texas come from the lowest income area in the United States. They are the poorest in the nation. And they have the lowest educational attainment and if we don't do this, this is going to hurt them.

We are going to live with the ramifications of that count for the next ten years.

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[page 1003]

THE COURT: What is your full name, please sir?

THE WITNESS: William Noah Kirby.

THE COURT: All right. Mr. Mealer, you may proceed.

EXAMINATION

By Mr. Mealer

Q. Mr. Kirby, where are you employed?

A. At the Texas Education Agency.
Q. And what capacity are you employed?

A. I'm Executive Assistant to the Commissioner of Education.

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commitment to public education to elementary and secondary education?

A. Yes, it's a major educational program. It's in excess of three billion dollars at this time.

Q. Just for one year?

A. For one year.

Q. Now, you have been with Title I since its inception in 1965; or when I say you have been with it, you have had some association with it. Isn't it true that the

original Title I has now been – well, there have been added additional programs aside from what was originally the poor Title I program for poor children?

A. Yes, sir, there have been.

Q. And what are those programs? Do you remember?

A. We have Title I Migrant.

Q. Let me interrupt you. What I tried to do on the blackboard there was draw the general Title I program, and then I just drew circles for some of the additional programs.

I wonder, could you just in order to assist me, because I need to keep track of them, could you fill in what some of these additional programs are?

MS. DASHER: Could I ask that these

[page 1013]

So, forty percent of the state or national average per pupil expenditure with these kinds of limitations, times the formula children go into that.

Q. Who are the formula children?

A. The formula children would be the children above the – well, the low income children, and the low income children would be defined by the Orshansky Index, the low income children as defined by the Orshansky Index, based on the latest census data; and so, we are currently using 1970 census figures.

Q. Let me interrupt you there. Do you know which state has more poor children according to the 1970 census than any other state in this country?

A. Texas.

Q. Thank you.

A. We had 636,776 low income children in Texas alone, which is the most in the nation. That's one factor.

The second factor is – well, the latest amendments modify the AFDC. You now count two-thirds of the children receiving AFDC payments above the Orshansky figure.

In other words, if the Orshansky Index for low income is $6500, you count those children

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Title I money. It's not forced on any school district, or for that matter on the State of Texas.

A. No. It's voluntary to request the funds.

Q. Thank you, Mr. Kirby. Just take a seat; and I think there in front of you you will notice an annual report of programs for the disadvantaged in Texas, 1977-1978, marked Plaintiff's Exhibit No. 19.

If you would, just turn to Page 4, and I think we have kind of a breakdown of some of the characteristics of the participants in the program. I guess we are talking about the children involved in the program.

A. Yes, I see it.

Q. And I notice that almost half of the children invovled in the Title I program are of Hispanic descent.

A. Well, we need to clarify one thing. This is not talking about just the Title I program. This is talking about

compensatory, which would include Title I as well as the State Compensatory Education Program.

But, of the children participating in those two programs combined, according to data,

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listed it as a national concern that the money was being all spent at the early levels.

But, consistently over the years it has been spent at that level because of USOE's insistence.

Q. Let me show you what is marked Defendant's Exhibit 6-2, and let me get some general idea of how much Title I money comes into the State of Texas.

Now, what has been the total allocation of Title I money, Title I general money, Title I A, looking at the poor kids, since the inception of the program?

A. Well, from 1965 until the current year, approximately 1.3 billion dollars have come to the State of Texas under Title I Regular.

Q. And I wonder if you could – I know you are going to have to make an estimate, looking at that figure, how much Title I money has come into this state since fiscal year '76, I guess the last five years.

A. Well, we had probably over half of that amount has come just since that time.

Q. Half a billion dollars?

A. Well, half a billion to more, to six hundred

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Q. Now, let's talk about some problems, or actually, let's talk about some general federal requirements that are tied to the use of this Title I money.

I don't know. I can think of one that seems to be most important. Is there one that comes to your mind?

A. Well, one of the most persistent kinds of problems, I guess, you are thinking of supplanting the whole concept that local districts must provide for all of its children a base level program; and then the Title I money must go on top of. If I may use the blackboard or the paper, rather than the blackboard, every school district is required to provide out of state and local funds a basic program for every child. The Title I funds must be supplementary; and by that, they must go on top of the basic program.

So, if we are spending, say, $1200 per child out of state and local money, the Title I money, if it is approximately $300 per child, would go on top of, and we would line up for the children with special needs that are in the Title I program, spending maybe $1500.

The problem is in defining the term supplementary. In other words, it becomes very difficult sometimes for school districts to see that they are spending all $1200 that they are required and then spending the Title I money on top of.

We have a concept that the Office of Education has put forward that in Texas we define as double-dosing. Essentially, what the feds have said is that if you are going to take a child that has problems in math, then

you must give him the state and local math first and then the Title I money will buy extra help in math.

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Q. I guess the general idea of the requirement, or the general requirement is that the whole Title I program is designed to supplement the education that the poverty child is receiving in the public schools.

A. That's right. It's in essence the concept that whatever you are going to give a child out of state and local, or whatever you are required to give a child out of state and local, must be given, and then the federal is extra.

For example, even if we receive a court order or something to do something special, that has to be done with state and local, and then the federal money would have to be on top of it.

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Q. Let's assume the district is educating undocumented aliens solely with local money. You wouldn't have any problem there.

A. We wouldn't have any problem, like I say, because we probably wouldn't know that. We might be a little nervous. We have had some experiences recently with a case where we paid back $58,000 out of state money because we had a program in the Rio Grande Valley that was providing education to migrant children, and we had a situation where that at the time some of the classrooms were almost empty where we had very few migrant children in the classes. They hadn't come back yet. We let some other disadvantaged children, for a portion of the children, and took them out in the migrant children program. We called out in the migrant children program. We called that space available. It wasn't costing any more. We weren't depriving

migrant children. The teachers were hired, and we got a federal audit on that, and they said we were serving ineligible children.

So, we were required to pay back, even though it didn't cost anything extra, we were required to pay back $58,000.

We even pointed out to them that the state had notified the US Office of Education that we were going to serve these children, and they came back with, "We are not held responsible for the illegal acts of our federal employees. The fact that you have told us doesn't prevent us from getting this money back."

So, our worry in Title I would be the concept that are you in fact required to provide an education to these children, and if you are required to do it, are you supplanting, and whether or not you can use the monies, to take some federal employee's definition, yes, you can serve the illegals, or no, you can't serve them. Our fear would be, can we believe what they told us. If they said yes and some auditor later on questioned us, we couldn't use it, as a defense that you told us it was all right to serve them.

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Q. Let me ask you this: If you had a regional director of HEW that said it was all right to serve undocumented aliens, would that have –

A. If the secretary said it was all right, it wouldn't take away my worries because of the court case where they said no officer of the federal government has the authority to override the law; and consequently, will not be bound by the illegal acts of our employees.

The only thing that would take away my worry that we would have some future problem would be if the Congress would write in the statute, and that's what they said on the migrant case. "If we had intended for you to serve non-migrants on the space available, we would have written into the law that you could serve those kids."

So, I think the thing that would make me comfortable, if they had intended to use these monies to serve illegals, that they would have written into the law that you could serve illegals.

The other problem with this is we are only able to serve about four hundred thousand kids with Title I now. If in fact we being to serve any significant numbers of illegals, it would eliminate that like number of children that are already here that are already in the schools that have a right to expect Title I services. Every illegal that we would serve with Title I would put out a legal that had a right to those services.

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Q. Mr. Kirby, is there anything in the federal regulations presently which would preclude the utilization of Title I funds, for example, if this judge were to order the state to educate illegal aliens and use Title I funds or Title VI funds?

A. 45 CFR 116.40 has a specific prohibition in it that comes under the supplanting area that says anything that you are required to do by state law, or subject to a court order, then you may not utilize Title I funds to meet those requirements. Title I funds could be used to go beyond that level; but whatever you are required to do, either by state law or by court order, Title I funds cannot be used to accomplish that.

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Q. That looks to me like you are not serving approximately two hundred and seventy-six thousand persons.

A. Two hundred and thirty-six thousand. We are serving less than two-thirds of the students that we receive money on.

Q. And that's because there isn't enough money. Is that correct?

A. That's right.

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TESTIMCNY OF MR. FRANK CONTRERAS

A. It's primarily on the basic skills, in reading, math, the oral language development. There are some enrichment programs.

Q. Mr. Contreras, is Title I Migrant money, can it be used on anybody besides migrant children?

A. No.

Q. Approximately, if you know, how many school districts in this state participate in the Title I Migrant program?

A. Three hundred and twenty.

Q. Is that approximately a third of all the school districts?

A. Yes.

Q. What about the districts that I wouldn't think would have any migrants, the big urban districts, Houston, Dallas, San Antonio, Fort Worth? Do they have migrant programs in those schools?

A. Yes.

Q. Mr. Contreras, which state has more eligible migrants; and we will get into eligibility in a minute. Which state has more eligible Title I migrants than any other state in this country?

A. Texas.

Q. Which state in this country gets more Title I, any grant money than any other state?

A. Texas.

THE COURT: Let me ask the question I wanted to ask this last witness, and I forgot about it.

Mr. Contreras, how do you pronounce your name?

THE WITNESS: Contreras.

THE COURT: Do you know how much Texas spends of its own tax money to educate a child in Texas?

THE WITNESS: I understand that it's about a thousand dollars.

THE COURT: Do you know how that stands relative to the other states of the union?

THE WITNESS: No, I don't know.

THE COURT: So, you think that Texas spends at least a thousand dollars per child per year of its own tax money? I'm not talking about federal money.

THE WITNESS: That's correct. I know there is some states that have a per pupil expenditure that's greater than Texas; but I don't know how Texas

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state approximately right now to the best of your knowledge, one hundred and fifty thousand migrant children in this state between the ages of, you said, three to seventeen?

A. Twenty-one.

Q. Is a twenty year old migrant considered a migrant child?

A. Yes, if he is in school.

Q. And I guess it is true that a substantial number of these migrant children speak Spanish as their primary language?

A. Yes.

Q. Do you have any information on statistics on that?

A. No. I wouldn't know what percentage of those.

Q. Okay. Now, let's discuss for a moment who is considered an eligible migrant for Title I purposes.

If you would, Mr. Contreras, just read that. A child whose parent or guardian is a migratory agricultural worker and who has moved within the past twelve months from one school district to another, or in a

state that is comprised of a single school district, has moved from one school administrative area to another to enable the child's guardian and/or a member of the child's immediate family to obtain temporary seasonal employment in an agricultural or fishing activity.

To your knowledge, is that your definition of an eligible Title I current migratory child?

A. Yes.

Q. Would a child fitting into this criteria be eligible to receive federal funds?

A. Yes.

Q. Formerly migratory child is a child who was eligible to be counted and served as a current migratory child, the person we just discussed, within the past five years who had been a currently migratory child within the five year period, but is not now currently a migratory child, who lives in an area served by a current migratory child education program, and has the concurrence of his or her parent or guardian to be continued to be considered a migratory child, would this child be eligible to receive Title I Migratory federal funds?

A. Yes.

Q. Isn't it true that the State of Texas receives migrant money not based on any census formula, but on the number of migrants and formerly migratory children that are identified in the State of Texas and recruited or reported to the migrant student records transfer system?

A. It's based on the FTE, generated by the number of students that fall under those categories.

Q. We will talk about the FTE; but generally, even with the FTE, the bottom line is we get more migrant money because we found more migrants in this state. Is that correct?

A. That's correct.

Q. Now, just generally, FTE stands for what?

A. Full Time Equivalency.

Q. Before we get into that, could you explain for the record what the migrant student records transfer system is?

A. It's a computer data bank where once we have determined that the child is an eligible migrant, then he is, with proper documentation, is taken care of. Then, that child is entered into a computer, which is a national system. Then, on a given calendar year, the count is taken, and the number of FTE that is generated by the number –

THE COURT: Let me ask a question

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FUTHER EXAMINATION

By Mr. Mealer

Q. Getting back to the Migrant Student Records Transfer Act, Mr. Contreras, I think we talked about one of the purposes of this system is to identify where migrant children are, isn't it?

A. That's right.

Q. And I guess another would be to kind of supplement their education to kind of keep track of children moving all around the country; and do you report anything about their education, their educational progress to the system?

A. The migrant records, student records, has two purposes, number one, to have a count of the number of students that have been identified. Secondly, as a vehicle of transmitting academic and health information concerning those children. For example, children that are in the migrant project here in Houston moving to Sacramento, California, their records go via this system. Therefore, the receiving teacher knows what that child was doing at the time that he left Texas. If he received immunizations here, they are not repeated at the receiving state or receiving school district.

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Q. Let me go back to that criteria. Now, reading the criteria of a currently migrantory child, and certainly reading the criteria of a formerly migrant child, who was a migrant four or five years ago, it doesn't seem to me to require that a migrant child to be identified has to be enrolled in a school. Is that not correct?

A. That's correct.

Q. In other words, and I want to be sure about this, a migrant child identified in this state for purposes of federal funds doesn't have to be in school just so long as he fits the federal criteria of a currently migratory child or formerly migratory child?

A. That's correct.

Q. Mr. Contreras, if you would open up the little folder that sits right before you, I think you will see a letter marked Plaintiff's Exhibit No. 220.

A. Yes.

Q. Could you take just a few minutes and look at that letter, see if you can recognize it. Is that your signature on the second page?

A. It is.

Q. Do you remember the reason you wrote this letter?

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regulation as prohibiting a recruiter, somebody out to identify migrant children, you interpret this regulation as prohibiting them from asking their documentation status?

A. That's correct.

Q. And so, when these people are out identifying migrant children, they do not ask whether they are American citizens, whether they are aliens, or whether they are illegal aliens?

A. That's correct.

Q. And you feel the federal rgulations prohibit you from asking that?

A. That's right.

Q. And this regulation went into effect in November of '78, did it not?

A. That's correct.

Q. If you would, Mr. Contreras, there is another letter in there, but this letter is marked, I think, Plaintiff's Exhibit No. 221. Let me find my copy.

It's a letter dated September the 7th, 1977, which is a year before this regulation that we talked about went into effect, the regulation that says you can't look at the documentation status of these migrant children.

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federal funds coming into this state from migrant education?

A. For that particular year.

Q. Mr. Contreras, isn't it true that almost half of the migrant funds in this state are allocated in one of the twenty educational service centers in this state?

A. That's correct.

Q. And that's Service Center No. 1, isn't it, sir?

A. Yes.

Q. Where is that?

A. Edinburg, Texas.

Q. Where does it cover?

A. It covers the Rio Grande Valley, thirty-four counties, I believe.

Q. Upon the Mexican border?

A. Yes.

Q. And that's where most of the migrant children have been identified, I would assume?

A. Right.

Q. Do you remember in our deposition when I asked you some of the common problems that the migrant programs have in not complying with federal guidelines, do you remember what the first problem that came into your mind was